IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 747 OF 2007

Suryadarshan Co. Hsg. Soc.Ltd. .... Petitioner

Vs.

State of Maharashtra & Ors. .... Respondents

Mr. Sanjay Jain i/b M/s M. Dhruva & Co. for Petitioner.

Mr. G.W. Mattos, AGP for Respondents.

CORAM : F.I. REBELLO, &
J.P. DEVADHAR, JJ.

DATE : 14TH AUGUST, 2007

P.C.

1) The Petitioners have earlier approached this Court by Writ Petition NO. 2060 of 2004. After hearing the parties, the petition came to be disposed of by order dated 25th April 2005. The dispute was as to the amount which the petitioners societies had to pay to respondent no. 2. As the controversy pertained to accounts, we had directed the Prothonotary and Senior Master to appoint a Chartered Accountant. We had further set out that if any party is aggrieved by the order of the Chartered Accountant, it would be open to the parties to take steps. The report of the Court

appointed Commissiner is not under challenge. What is being sought is appointment of another Chartered Accountant for revaluation.

2) By the present petition, the petitioners through their counsel have contended as under :

(i) It is submitted that the agreement of sale is illegal being unsustainable.

(ii) It is submitted that assuming that the agreement subsists, there was a circular issued by MHADA on 17th July 2004, the effect of which was that the penalty on the defaulted instalment was restricted at the rate of Rs.2/- per default and not Rs.2/- per month per default.

(iii) Thirdly it is contended that the amenities that had to be provided in terms of the agreement had not been provided and consequently, they were not bound to pay the amounts as demanded on behalf of the respondents.

3) The agreement was the subject matter of Writ Petition no. 2060 of 2004. A Chartered

Accountant was appointed to work out the correct amount which was due and payable.

4) The grievance in the earlier petition was the demand based on the agreement in which this Court appointed a Chartered Accountant. The validity or otherwise of the agreement cannot be gone into in the present writ petition, as the issue was not raised in the earlier petition nor was liberty given to the petitioner to raise that issue.

5) In so far as the second contention is concerned, the circular of 17th July 2004 was issued by the then Vice President. In Para 22 of the petition, they have averred that circular was stayed. The copy of circular of 13th April 2005 staying the circular of 17th July 2004 was not annexed to the reply filed by the respondents. Respondents were asked to file copy of the same on record and also give copy to the petitioners. From the averment in para no. 22, it is clear that the petitioners were aware of the said circular. In other words, they could not have approached this court based on the circular of 17th July 2004 which was stayed. The controversy whether the circular of 18th July 2004 was issued by MHADA or whether

the Vice President had authority or similar reasons as also for the same purpose the legality of circular of 13th April 2005 need not be gone into. On behalf of the respondents, learned counsel points out that the issue is being considered by MHADA.

6) The third contention as advanced is that in terms of the circular, no amenities are provided and as such they were not bound to pay as demanded. In our opinion, this issue cannot be gone into in the exercise of our extra ordinary jurisdiction.

7) In the light of above, petition is dismissed with no order as to costs.

(J.P. DEVADHAR, J.) **(F.I. REBELLO, J.)**